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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161849
Party	Plaintiff V Secret Catalogue, Inc., and Intimate Beauty Corporation d/b/a Victoria's Secret Beauty ,
Correspondence Address	Frank J. Colucci Colucci & Umans Manhattan Tower 101 East 52nd Street New York, NY 10022
Submission	Opposer's response to applicant's motion to amend application
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Date	01/18/2005
Attachments	RESPONSE ZO ZEXY.txt (2 pages)

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V SECRET CATALOGUE, INC., :
and INTIMATE BEAUTY CORPORATION D/B/A
VICTORIA'S SECRET BEAUTY, :
Opposers, : Opposition
v. : No. 91,161,849
ZO BRANDS, LLC :
(formerly JONATHAN PONSARD and
ZOPPINI, LLC),
:
Applicant. :

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OPPOSERS' RESPONSE TO APPLICANT'S
MOTION TO AMEND APPLICATION
Introduction

Opposers, V Secret Catalogue, Inc. and Intimate Beauty Cor
poration
d/b/a Victoria's Secret Beauty, hereby oppose applicant, Zo Brands,
LLC's motion to amend its Application Serial No. 78/187,262 to delete
two of the goods identified in its application as falling in
International Class 9, namely, electric hair curlers and electric hair
curling irons.

Proceedings to Date

On August 13, 2004, opposers filed a notice of opposition to
applicant, Zo Brands, LLC's (formerly Jonathan Posard, and Zoppini,
LLC) Application Serial No. 78/187,262 to register the mark ZO ZEXY for
goods and services in International Classes 3, 9, 24, 25 and 35 on the
grounds that the mark ZO ZEXY is confusingly similar to opposers' mark
SO SEXY for the same and/or related goods and/or services.

On October 1, 2004, applicant filed an extension of time to resp
ond to
the notice of opposition with opposers' consent. On October 7, 2004
applicant filed a motion to stay the opposition proceeding and all
current deadlines pending the outcome of Sexy Hair Concepts' Opposition
No. 91,125,739 to opposers' Application Serial No. 78/094,035 to
register the mark SO SEXY. Opposers consented to the motion without
any admission that in the event Sexy Hair Concepts were to succeed in
its opposition, applicant here would have priority over opposers, or
that opposers would have no grounds of opposition to applicant's
Application Serial No. 78/187,262.

In view of the suspension, applicant has not filed an answer to
opposers' notice of opposition.

Argument

Opposers notice of opposition to applicant's ZO ZEXY application
speaks as of the date of its filing, which at the time covered
specified goods and services in International Classes 3, 9, 24, 25 and
35.

Applicant now seeks to delete two items namely, electric hair cu
rlers

and electric hair curling irons from the identification of goods in its application falling in International Class 9.

Generally, the deletion of goods from an application is permissible.

However, where the application is involved in an inter partes proceeding, as here, any amendment to an application involved in such a proceeding must be with the consent of the opposing party.

In the present opposition, applicant has requested and been granted a stay of all proceedings with opposers' consent. No answer has been filed by applicant to the notice of opposition. No discovery has taken place. Little, if anything, about applicant, its use or intended use of ZO ZEXY is known to opposers. Moreover, there is no indication in applicant's motion as to whether it nevertheless intends to use or to continue to use its ZO ZEXY mark on the goods it seeks to delete from the application.

Under the circumstances, opposers are not in a position to fairly evaluate the impact of applicant's motion to amend on their opposition until the suspension of proceedings in this opposition has been lifted and discovery of applicant has been undertaken by opposers. Therefore, opposers oppose applicant's motion to amend at this time.

Dated: New York, New York
January 18, 2005

COLUCCI & UMANS

COLUCCI & UMANS

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "Opposer's Response to Applicant's Motion to Amend Application" has been served by sending a true and accurate copy thereof by first class mail, postage prepaid, to applicant's attorney, Daniel S. Polley, Esq., 1215 East Broward Boulevard, Fort Lauderdale, Florida, this 18th day of January, 2005.

Georgann
M. Callaghan /s/